

## **Adopted Rule Amendment:**

### **Chapter 343. Contested Case Procedures**

**§343.5. Licensure of Persons with a History of Substance Abuse**

**§343.6. Other Grounds for Denial of a License or Discipline of a Licensee**

**§343.8. Licensure of Persons with a History of Voluntary or Involuntary Psychiatric Hospitalization**

**§343.9. Licensure of Persons with Criminal Convictions**

**§343.21. Witness Fees and Expenses**

**§343.22. Service of Notice**

**§343.36. Filing and Receipt of Complaints**

**§343.40. Informal Conference**

**§343.41. Agreed Orders**

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**Summary of Amendment:** The amendments are adopted in order to provide clarity to the procedures for contested cases, to correct inaccurate and outdated references, and to conform the rules with the physical therapy provisions in Chapter 453, Occupations Code; with the administrative procedures in Chapter 2001, Government Code; and with the consequences of criminal conviction in Chapter 53, Occupations Code.

#### **Rulemaking Process:**

- Proposed by the Texas Board of Physical Therapy Examiners (PT Board) at April 21, 2023 meeting.
- Proposed Rulemaking Memorandum sent to the Office of the Governor on April 28, 2023 for review.
- Approved by the Executive Council of Physical Therapy & Occupational Therapy Examiners (ECPTOTE) May 11, 2023 meeting.
- Notification of review from Office of the Governor on 6/02/2023 with no recommended changes.
- Published in the June 16, 2023 edition of the *Texas Register* for public comment. No comments received.
- Final adoption by the PT Board at July 21, 2023 meeting to be effective September 1, 2023.

### **Chapter 343. Contested Case Procedures**

**§343.5. Licensure of Persons with ~~[a History of]~~ Substance Abuse or Addiction.**

(a) The board may deny a license to or discipline an applicant/respondent who used drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence. ~~[has been found to have a history of substance abuse.]~~

(b) In review of a complaint alleging intemperate use of drugs or alcohol by a respondent/applicant, the board shall consider the following evidence in determining the respondent's/applicant's present fitness to practice physical therapy:

(1) – (4) No change.

(5) [notarized] letters of recommendation.

(c) – (d) No change.

#### **§343.6. Other Grounds for Denial of a License or Discipline of a Licensee.**

(a) Grounds for the board to deny a license to or discipline an applicant/respondent may include the following:

(1) – (2) No change.

(3) failure to meet the qualifications for licensure as set forth in the Act, §453.203 [§§8, 9, or 10], as applicable, and/or to any other rules or procedures set forth by the board relating to these sections;

(4) No change.

(b) No change.

#### **§343.8. Licensure of Persons with a History of Voluntary or Involuntary Psychiatric Hospitalization.**

(a) No change.

(b) In review of a complaint alleging that the respondent/applicant has a history of voluntary or involuntary psychiatric hospitalization, the board shall consider the following evidence in determining the respondent's/applicant's present fitness to practice physical therapy:

(1) – (3) No change.

(4) [notarized] letters of recommendation.

(c) No change.

#### **§343.9. Licensure of Persons with Criminal Convictions.**

(a) The board may revoke or suspend an existing valid license, disqualify a person from receiving or renewing a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the practice of physical therapy. Those crimes which the board considers to be directly related to the duties and responsibilities of a licensed physical therapist or physical therapist assistant shall include, but are not limited to:

(1) No change.

(2) any criminal violation of the [Physical Therapy Practice] Act or other statutes regulating or pertaining to physical therapy or the medical profession;

(3) – (16) No change.

(b) In determining whether a crime not listed previously relates to physical therapy, the board will consider:

(1) – (2) No change.

(3) the extent to which a license might offer opportunities to engage in further criminal activity of the same type as that in which the person was previously engaged; [and]

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and to discharge the responsibilities of a physical therapist or physical therapist assistant; and[-]

(5) any correlation between the elements of the crime and the duties and responsibilities of a physical therapist or physical therapist assistant.

(c) In review of a complaint alleging that the respondent/applicant has been convicted of a crime which directly relates to the duties and responsibilities of a physical therapist or physical therapist assistant, the board shall consider the following evidence in determining the respondent's/applicant's present fitness to practice physical therapy:

(1) – (2) No change.

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) [(3)] the conduct and work activity of the person before [prior to] and after the criminal activity;

(5) [(4)] evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after [following] release;

(6) [(5)] evidence of the person's compliance with any condition of community supervision, parole, or mandatory supervision, including [notarized] letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; letters from the sheriff or chief of police where the person resides; and other persons having contact with the convicted person; and

(7) [(6)] other evidence of the person's fitness, including letters of recommendation, records of steady employment, provision for dependents, payment of all court costs, supervision fees, fines, and restitution if ordered as a result of the person's conviction.

(d) – (e) No change.

#### **§343.21. Witness Fees and Expenses.**

A witness who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce documents, records, or other tangible things, shall receive reimbursement for expenses incurred in complying with the subpoena. Reimbursement shall be in accordance with Government Code, §2001.103 ~~[be based on the minimum set forth in the Administrative Procedure and Texas Register Act (APTRA) or the State of Texas Travel Allowance Guide issued by the Comptroller of Public Accounts, whichever is greater]~~. Said amount shall be paid by the party at whose request the witness is subpoenaed.

#### **§343.22. Service of Notice.**

Service of notice of hearing ~~[or investigation]~~ on the respondent/applicant shall be complete and effective in accordance with Texas Government Code, §2001.051 and §2001.052. ~~[if the document to be served is sent by registered or certified mail to the respondent/applicant at his or her most recent address as shown in the records of the board. Service by mail shall be complete upon deposit of the paper enclosed in a post paid properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service.]~~

#### **§343.36. Filing and Receipt of Complaints.**

(a) – (b) No change.

(c) Prior to commencing disciplinary proceedings, the staff shall serve the respondent with written notice in accordance with ~~[the Texas]~~ Government Code, §2001.054(c) ~~[§2001.54(c)]~~.

(1) – (2) No change.

#### **§343.40. Informal Settlement Conference.**

(a) At any time after the filing of a ~~[sworn]~~ complaint, an informal settlement conference may be held prior to the contested case hearing for the purpose of:

(1) – (5) No change.

(b) No change.

(c) Participation in an informal settlement conference shall not be mandatory for the licensee or applicant, nor is it a prerequisite to a formal hearing.

(d) The executive director or staff shall decide upon the time, date, and place of the informal settlement conference and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than 10 days prior to the date of the informal settlement conference ~~[by certified mail, return receipt requested,]~~ to the last known address of the licensee or applicant. The 10 days shall begin on the date ~~[of]~~ the notice [mailing] is sent electronically or deposited into the mail. The licensee or applicant may waive the 10-day notice requirement in writing.

(1) The notice shall inform the licensee or applicant of the following:

(A) – (G) No change.

(H) that the informal settlement conference shall be cancelled if the licensee or applicant notifies the executive director or staff that he or she will not attend.

(2) A copy of the board's rules ~~[concerning informal disposition]~~ may ~~[shall]~~ be referenced ~~[enclosed]~~ with the notice of the informal settlement conference.

(e) The notice of the informal settlement conference shall be sent ~~[by certified mail, return receipt requested,]~~ to the complainant at his or her last known address. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the informal settlement conference. The complainant shall be notified if the conference is cancelled.

(f) Participants in the informal settlement conference may include board members, agency staff, the complainant, the licensee or applicant, attorneys representing any of the participants, and any other persons determined by the investigation committee or the executive director or board's designee to be necessary for proper conduct of the conference. All other persons shall be excluded.

(g) The informal settlement conference ~~[shall be informal and]~~ shall not follow the procedures established in this chapter for contested cases and formal hearings.

(h) The licensee, the licensee's attorney, investigation committee members, and board staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(i) The board's attorney ~~[An attorney]~~ from the office of the attorney general shall attend ~~[each]~~ the informal settlement conferences ~~[conference]~~ to advise the ~~[The]~~ board members, ~~[or]~~ executive director, and staff. ~~[may call upon the attorney at any time for assistance in the informal settlement conference.]~~

(j) No change.

(k) Access to the board's investigative file may be prohibited or limited in accordance with ~~[Texas Civil Statutes, Article 6252-13a, and]~~ the Administrative Procedure Act (APA) and Texas Register Act (TRA) ~~[(APTRA)]~~.

(l) No formal recording of the informal settlement conference shall be made.

(m) At the conclusion of the informal settlement conference, the investigation committee members, ~~[or]~~ the executive director, or staff may propose an informal disposition of a complaint or contested case to the respondent subject to the board's approval ~~[make recommendations for informal disposition of the complaint or contested case]~~. The informal disposition ~~[recommendations]~~ may include any disciplinary action authorized by the ~~[Physical Therapy Practice]~~ Act and rules. The investigation committee, ~~[or]~~ the executive director, or staff may also close the complaint investigation because ~~[conclude that]~~ the board lacks jurisdiction, ~~[that]~~ a violation of the act or rules was ~~[this chapter has]~~ not ~~[been]~~ established, or determine ~~[order that the investigation be closed, or refer the matter for]~~ further investigation is required.

#### **§343.41. Agreed Orders.**

(a) A proposed ~~[An]~~ agreed order may be negotiated with any person under the jurisdiction of the board, the terms of which shall be approved by the investigation committee ~~[or by the executive director]~~.

(b) The proposed agreed order will be sent to the respondent by a method of service in accordance with Government Code, §2001.142 ~~[certified mail]~~. To accept the agreed order, the respondent must sign it ~~[in the presence of a notary]~~ and return it to the board staff within 10 days after receipt. Inaction by the respondent constitutes rejection. If the respondent rejects the proposed settlement, the matter shall be referred to the investigation committee, ~~[or]~~ the executive director, or staff for appropriate action.

(c) The proposed agreed order with the ~~[notarized]~~ signature of the respondent will be presented to the board. The proposed agreed order shall have no effect until such time as the board may, at a regularly scheduled meeting, take action approving the agreed order. If approved by the board, the chair of the board is authorized to sign the agreed order on behalf of the board. When the board has approved and signed ~~[ratified]~~ an agreed order, the board order will be sent to the licensee. ~~[the licensee will reimburse the board for all the investigation expenses. The investigation expenses will be included as a condition of the order. A copy of the agreed order will be sent to the licensee's employer, and facility administrator.]~~

(d) No change.

(e) Consideration by the board.

~~[(1) Any board member who participated in the investigation of the complaint or formulation of the proposed agreed order may not participate in the board review of the agreed order.]~~

(1) ~~[(2)]~~ The name and license number of the licensee or the name of the applicant will not be made available to the board until after the board has reviewed and made a decision on the agreed order.

(2) ~~[(3)]~~ Upon an affirmative majority vote, the board shall approve ~~[authorize]~~ the agreed order, and the chairperson of the board will sign it on behalf of the board. The final board order ~~[board-approved agreed order]~~ will be provided to the respondent.

(3) ~~(4)~~ If the board does not approve the agreed order, the matter may ~~will~~ be referred to the investigation committee, ~~or~~ the executive director, or designee for other appropriate action. The respondent and the complainant shall be so informed.